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8
9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

11 In re

12 BEVERLY COMMUNITY HOSPITAL
13 ASSOCIATION, dba BEVERLY
14 HOSPITAL, a nonprofit public benefit
corporation,¹

15 Debtor.

- 16 ☒ Affects all Debtors
17 ☐ Affects Beverly Community Hospital
18 Association
19 ☐ Affects Montebello Community Health
20 Services, Inc.
21
22
23
24

Case No. 2:23-bk-12359-VZ

Chapter 11
Jointly administered with:

Case No. 2:23-bk-12360-VZ
Adv. No.

**COMPLAINT TO AVOID AND RECOVER
TRANSFERS PURSUANT TO 11 U.S.C.
§§ 544, 547, 548, 550 AND TO
DISALLOW CLAIMS PURSUANT TO 11
U.S.C. §502**

DATE:
TIME: [To Be Set By Summons]
PLACE:

25
26
27 ¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax
28 identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), and
Montebello Community Health Services, Inc. (3550).

1 HOWARD M. EHRENBERG, solely in his
2 capacity as chapter 11 trustee,

3 Plaintiff,

4 vs.

5 BIOMERIEUX, INC.,

6 Defendant.
7

8 For his "Complaint to Avoid And Recover Transfers Pursuant to 11 U.S.C.
9 §§ 544, 547, 548, 550 and to Disallow Claims Pursuant To 11 U.S.C. §502" (the
10 "Complaint"), against Biomerieux, Inc. (hereinafter, "Defendant"), plaintiff Howard M.
11 Ehrenberg, solely in his capacity as the duly appointed, qualified, and acting chapter 11
12 trustee (the "Trustee" or "Plaintiff"), for the jointly-administered estates of the debtors
13 Beverly Community Hospital Association ("Beverly Hospital") and Montebello Community
14 Health Services, Inc. (collectively, the "Debtors"), hereby alleges and avers as follows:

15 **STATEMENT OF JURISDICTION, NATURE OF PROCEEDING, AND VENUE**

16 A. Nature of Proceeding:

17 1. Plaintiff seeks to avoid and recover from Defendant, or from any
18 other person or entity for whose benefit the transfers were made, all (a) preferential
19 transfers of property of the Debtors made during the ninety (90) day period prior to the
20 commencement of the bankruptcy proceedings of the Debtors pursuant to sections 547
21 and 550 of chapter 5 of title 11 of the United States Code (the "Bankruptcy Code") and,
22 subject to proof, (b) transfers that may have been fraudulent conveyances pursuant to
23 sections 548 and 550 of the Bankruptcy Code.

24 2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d)
25 and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against
26 the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but
27 hereby reserves all of its rights and the rights of the Debtors to object to any such claim
28

1 for any reason, including, but not limited to, any reason set forth in sections 502(a)
2 through (j) of the Bankruptcy Code.

3 B. Jurisdiction and Venue:

4 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
5 157(b)(1) and 1334(b). This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A),
6 (F), and (O). This action is a proceeding arising in and/or related to the jointly-
7 administered bankruptcy cases of In re Beverly Community Hospital Association dba
8 Beverly Hospital, bearing Case No. 2:23-bk-12359-VZ, and In re Montebello Community
9 Health Services, Inc., bearing Case No. 2:23-bk-12360-VZ (the “Bankruptcy Cases”),
10 which are cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101
11 et seq., and which are pending in the United States Bankruptcy Court for the Central
12 District of California, Los Angeles Division (the “Bankruptcy Court” or “Court”).

13 2. Regardless of whether this proceeding is core, non-core, or
14 otherwise, Plaintiff consents to the entry of a final order and judgment by the Bankruptcy
15 Court. Defendant is hereby notified that Rule 7008 of the Federal Rules of Bankruptcy
16 Procedure requires Defendant to plead whether consent is given to the entry of a final
17 order and judgment by the Bankruptcy Court if it asserts any counterclaims.

18 3. Venue properly lies in this judicial district pursuant to 28 U.S.C. §§
19 1408 and 1409.

20 4. The statutory and legal predicates for the relief sought herein are
21 sections 502, 544, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001
22 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

23 **THE PARTIES, RELEVANT BACKGROUND, AND ALLEGATIONS COMMON TO ALL**

24 **CLAIMS FOR RELIEF**

25 A. The Parties

26 1. Plaintiff, Howard M. Ehrenberg, is the duly appointed, qualified, and
27 acting Chapter 11 Trustee for the Debtors in the Bankruptcy Cases.

2. Upon information and belief, Defendant was, at all relevant times, a vendor or creditor that provided goods or services to or for the Debtors. Upon further information and belief, at all relevant times, Defendant's principal place of business is located at 595 Anglum Drive, Hazelwood, MO 63042. Plaintiff is informed and believes that Defendant is a biotechnology company that provides diagnostic solutions and systems residing in and subject to the laws of the State of Missouri.

B. Factual Background

1. On April 19, 2023 (the "Petition Date"), the Debtors commenced the Bankruptcy Cases when each filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code. Those cases were consolidated for procedural purposes and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

2. As of the Petition Date, Beverly Hospital owned and operated a 224-bed acute care hospital in Montebello, California that primarily served low-income patients in the Los Angeles area.

3. On August 7, 2023, the Debtors filed their Notice of Motion and Motion for Entry of an Order (I) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, and Encumbrances to White Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Related Thereto; and (C) Granting Related Relief [Bankr. Doc. No. 638] (the "Sale Motion") requesting that the Bankruptcy Court approve the Asset Purchase Agreement between the Debtors and White Memorial Medical Center dated as of August 7, 2023 (the "APA").

4. On August 18, 2023, the Court entered the Sale Order approving the Sale Motion. [Bankr. Doc. No. 718] On September 7, 2023, the Debtor filed its *Notice of Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial* [Bankr. Doc. No. 789] pursuant to which, among other things, the Debtor reported that the Closing (as defined in the APA) of the sale to White Memorial Medical Center

1 occurred on September 6, 2023 (the “Closing Date”), with an Effective Time (as defined
2 in the APA) of 12:01 a.m. (Pacific Time) on September 7, 2023.

3 5. On September 11, 2023, U.S. Bank caused to be filed in the
4 Bankruptcy Cases its “U.S. Bank Trust Company, National Association, As Master
5 Trustee’s Emergency Request for Status Conference and Order to Show Cause Why A
6 Chapter 11 Trustee Should Not Be Appointed” (the “OSC”) [Bankr. Doc. No. 791]. The
7 OSC was granted by the Court pursuant to its “Order Directing the Appointment of A
8 Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee Applications”
9 entered on September 13, 2013 [Bankr. Doc. No. 803].

10 6. On September 15, 2023, the Office of the United States Trustee (the
11 “OUST”) filed its “Notice of Appointment of Chapter 11 Trustee” [Bankr. Doc. No. 811]
12 under section 1104 of the Bankruptcy Code pursuant to which Plaintiff was appointed
13 chapter 11 trustee for the Debtors’ jointly administered estates. On September 15, 2023,
14 the OUST filed its “Application for Order Approving Appointment of Trustee and Fixing
15 Bond” [Bankr. Doc. No. 813]. On September 15, 2023, the Court entered its “Order
16 Approving the Appointment of A Chapter 11 Trustee” [Bankr. Doc. No. 815].

17 7. Plaintiff brings this action solely in his capacity as chapter 11 trustee
18 for the Debtors’ estates. To the extent that Plaintiff hereby asserts claims under 11
19 U.S.C. § 544(b), Plaintiff is informed and believes, and on that basis alleges thereon, that
20 there exists in this case one or more creditors holding unsecured claims allowable under
21 11 U.S.C. § 502, or that are not allowable only under 11 U.S.C. § 502(e), who could have
22 avoided the respective transfers or obligations under California or other applicable law
23 before the Petition Date.

24 8. Plaintiff was appointed as chapter 11 trustee after the Petition Date.
25 As a result, Plaintiff does not have personal knowledge of the facts alleged in this
26 Complaint that occurred prior to his appointment and, therefore, alleges all those facts on
27 information and belief. Plaintiff reserves the right to amend this Complaint to allege
28

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1 additional claims against defendant and to challenge and recover transfers made to or for
2 the benefit of defendant in addition to those transfers alleged in this Complaint.

3 9. During the ninety (90) days before the Petition Date, that is between
4 January 19, 2023, and April 19, 2023 (the "Preference Period"), the Debtors continued to
5 operate their businesses and transferred property of the Debtors, either by checks,
6 cashier checks, wire transfers, ACH transfers, direct deposits, credit card payment, or
7 otherwise to various entities.

8 10. During the course of their relationship, the Debtors and Defendant
9 entered into agreements, which are evidenced by invoices, communications and other
10 documents (collectively, the "Agreements"). The Agreements concerned and related to
11 the goods and/or services provided by Defendant to the Debtors. The Debtors' payments
12 to the Defendant during the Preference Period are set forth on the Statement of Account,
13 which is attached as Exhibit A hereto and incorporated by reference.

14 11. The Debtors made transfer(s) of an interest of the Debtors' property
15 to or for the benefit of the Defendant during the Preference Period through payments
16 aggregating an amount not less than the total set forth on Exhibit A (the "Transfer" or
17 "Transfers"). The details of each Transfer are set forth on Exhibit A. Such details include
18 "Payment Number," "Payment Amount," "Payment Date," "Debtor Transferor(s)," "Invoice
19 Number," "Invoice Date," and "Invoice Amount."

20 12. Plaintiff seeks to avoid all of the transfers of an interest of the
21 Debtors' property made by the Debtors to Defendant within the Preference Period.

22 13. Prior to filing this Complaint, Plaintiff performed a due diligence
23 evaluation of the reasonably knowable affirmative defenses to avoidance and recovery of
24 the Transfers available to Defendant, including defenses arising under section 547(c), for
25 which Defendant bears the burden of proof under section 547(g) by a preponderance of
26 evidence.

27 14. Based upon Plaintiff's own due diligence evaluation of the
28 reasonably knowable affirmative defenses to avoidance of the Transfer(s), Plaintiff has

determined that Plaintiff may avoid and recover some or all of the Transfers even after taking into account Defendant's potential affirmative defenses.

FIRST CLAIM FOR RELIEF

**(Avoidance of Preferential Transfers Pursuant to
11 U.S.C. §§ 547)**

15. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 14 as though set forth in full.

16. Plaintiff is informed and believes, and on that basis alleges thereon, that during the Preference Period, the Debtors did not have sufficient funds to pay their debts as they became due and fell behind on their payments to creditors.

17. Plaintiff is informed and believes, and on that basis alleges thereon, that the Transfers were made to or for the benefit of Defendant within ninety days of the Petition Date.

18. Plaintiff is informed and believes, and on that basis alleges thereon, that the Transfers satisfy the definition of "transfers" as that term is defined in 11 U.S.C. § 101(54).

19. Plaintiff is informed and believes, and on that basis alleges thereon, that the Transfers were made to or for the benefit of Defendant, as a creditor of the Debtors at the time of the respective transfers, as the term "creditor" is defined by 11 U.S.C. § 101(10).

20. The Transfers were transfers of interests of the Debtors in property.

21. The Transfers were for or on account of antecedent debts owed by the Debtors to Defendant before the Transfers were made.

22. The Transfers were made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to section 547(f) of the Bankruptcy Code.

23. Plaintiff is informed and believes, and on that basis alleges thereon, that the Transfers enabled or will enable Defendant to receive more than Defendant

1 would receive if (i) the Debtors' Bankruptcy Cases were cases under chapter 7 of title 11
2 of the United States Code; (ii) the Transfers had not been made; and (iii) Defendant
3 received payments of such debt to the extent provided by title 11 of the United States
4 Code.

5 24. Based on the foregoing, Plaintiff may avoid the Transfers pursuant to
6 section 547(b) of the Bankruptcy Code.

7 **SECOND CLAIM FOR RELIEF**

8 **(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(B))**

9 25. Plaintiff realleges and incorporates herein by reference each and
10 every allegation contained in paragraphs 1 through 24 as though set forth in full.

11 26. To the extent one or more of the Transfers identified on Exhibit A
12 was not made on account of an antecedent debt, was a prepayment for goods and/or
13 services subsequently received, or was incurred by one Debtor entity but paid for by
14 another Debtor entity without a corresponding intercompany receivable recorded by the
15 Debtor incurring the debt, Plaintiff pleads in the alternative that the Debtor(s) making
16 such transfer(s) did not receive reasonably equivalent value in exchange for such
17 transfer(s) (the "Fraudulent Transfers"); and

18 27. The Debtors were insolvent as of the date of the Fraudulent
19 Transfer(s), or became insolvent as a result of the Fraudulent Transfer(s); or

20 28. The Debtors were engaged, or about to engage, in business or a
21 transaction for which any property remaining with the Debtors was an unreasonably small
22 capital; or

23 29. The Debtors intended to incur, or believed they would incur, debts
24 beyond their ability to pay upon maturity.

25 30. Based upon the foregoing, the Fraudulent Transfers are avoidable
26 pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

THIRD CLAIM FOR RELIEF

(Recovery of Avoided Transfers or the Value Thereof Pursuant to

11 U.S.C. § 550(a))

31. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 30 as though set forth in full.

32. Plaintiff is entitled to avoid the Transfers pursuant to Section 547(b) of the Bankruptcy Code and any Fraudulent Transfers pursuant to Section 548(b) of the Bankruptcy Code (collectively, the "Avoided Transfers").

33. Defendant is the transferee (initial, immediate, mediate and/or otherwise) of the Avoidable Transfers and/or the entity or person for whose benefit the Avoidable Transfers were made, within the meaning of 11 U.S.C. § 550(a). Based thereon, Plaintiff is entitled to recover the equivalent value of any property recovered on account of the Avoidable Transfers for the benefit of the Debtor's estate from Defendant, together with interest at the applicable rate from the date of the Avoidable Transfers, for the benefit of the Debtors' estates.

FOURTH CLAIM FOR RELIEF

(Preservation of Transfers Avoided Pursuant to 11 U.S.C. § 551)

34. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 33 as though set forth in full.

35. Pursuant to 11 U.S.C. § 551, the Avoidable Transfers are preserved for the benefit of the Debtors' estate as the Avoidable Transfers are avoidable under 11 U.S.C. §§ 547(b), 548 and 11 U.S.C. § 550 as set forth in this Complaint.

FIFTH CLAIM FOR RELIEF

(For Disallowance of Claims Pursuant to 11 U.S.C. § 502(d))

36. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 35 as though set forth in full.

37. Defendant is a transferee of transfers avoidable under sections 547 and/or 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

38. Defendant has not paid to the Plaintiff the amount of the Avoidable Transfer(s), or turned over such property, for which Defendant is liable under section 550 of the Bankruptcy Code

39. Pursuant to 11 U.S.C. § 502(d), Plaintiff requests that (a) any claim scheduled on behalf of the Defendant in the Bankruptcy Cases and/or (b) any proof of claim that was or could be filed by Defendant be disallowed for Defendant's failure to return or repay the equivalent value of any property recovered on account of the Avoidable Transfers, until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfers, plus interest thereon.

RESERVATION OF RIGHTS

40. Plaintiff reserves the right to amend this Complaint to include, among other things, (i) further information regarding the Transfers, (ii) additional transfers, (iii) modifications of and revisions to Defendant's name, (iv) additional defendants, and (v) additional claims for relief, that may become known to Plaintiff at any time during this adversary proceeding through formal discovery or otherwise, and for the amendments to relate back to this Complaint.

41. Plaintiff reserves the right to bring all other claims for relief that Plaintiff may have against Defendant, on any and all grounds, as allowed under the law or in equity. Additionally, nothing contained in this Complaint shall be construed as a waiver of Plaintiff's right to object to the proof of claim filed by Defendant.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

ON THE FIRST CLAIM FOR RELIEF

For a judgment and/or order that the Transfers are avoided pursuant to 11 U.S.C. § 547(b);

ON THE SECOND CLAIM FOR RELIEF

For a judgment and/or order that the Fraudulent Transfers are avoided pursuant to 11 U.S.C. § 548(a)(1)(B);

ON THE THIRD CLAIM FOR RELIEF

For a judgment and/or order that Plaintiff recover the equivalent value of any property recovered on account of the Avoidable Transfers for the benefit of the Debtors' estates from Defendant pursuant to 11 U.S.C. § 550;

ON THE FOURTH CLAIM FOR RELIEF

For a judgment and/or order that Plaintiff is entitled to preserve the Avoidable Transfers for the benefit of the Debtors' estates under 11 U.S.C. § 551;

ON THE FIFTH CLAIM FOR RELIEF

For a judgment and/or order disallowing any claim(s) scheduled on behalf of the Defendant or claims that Defendant may assert or has asserted against the Debtors' estates under 11 U.S.C. § 502(d);

ON ALL CLAIMS FOR RELIEF

For interest in an amount authorized by law;

For costs of suit incurred herein, including, without limitation, attorneys' fees; and

For such other and further relief as the Court deems just and proper.

DATED: April 16, 2025

Greenspoon Marder LLP

By: /s/ Mark S. Horoupian

Mark S. Horoupian
Attorneys for Plaintiff, Howard M. Ehrenberg,
Chapter 11 Trustee

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EXHIBIT A

Transfers During Preference Period

Debtor Transferor(s)	Debtor(s) Incurring Antecedent Debt	Payment Number	Payment Date	Payment Amount	Invoice Number	Invoice Date	Invoice Amount
Beverly Community Hospital Association	Beverly Community Hospital Association	041539	2/16/2023	\$10,522.36	1212904836	11/2/2022	\$407.57
Beverly Community Hospital Association	Beverly Community Hospital Association	041539	2/16/2023	\$10,522.36	1212911047	11/14/2022	\$7,516.85
Beverly Community Hospital Association	Beverly Community Hospital Association	041539	2/16/2023	\$10,522.36	1212913990	11/16/2022	\$2,597.94
Beverly Community Hospital Association	Beverly Community Hospital Association	042018	3/27/2023	\$3,851.94	1212916576	11/21/2022	\$3,000.59
Beverly Community Hospital Association	Beverly Community Hospital Association	042018	3/27/2023	\$3,851.94	1212918339	11/23/2022	\$851.35
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212923399	12/2/2022	\$5,171.52
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212923400	12/2/2022	\$448.21
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212926379	12/6/2022	\$485.71
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212930338	12/12/2022	\$185.26
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212933301	12/15/2022	\$8,415.03
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212938298	12/22/2022	\$5,164.65
Beverly Community Hospital Association	Beverly Community Hospital Association	042061	3/31/2023	\$20,475.27	1212940895	12/28/2022	\$604.89
Beverly Community Hospital Association	Beverly Community Hospital Association	042211	4/18/2023	\$12,713.96	1212946100	1/5/2023	\$3,258.67
Beverly Community Hospital Association	Beverly Community Hospital Association	042211	4/18/2023	\$12,713.96	1212953141	1/17/2023	\$4,908.85
Beverly Community Hospital Association	Beverly Community Hospital Association	042211	4/18/2023	\$12,713.96	1212958460	1/24/2023	\$4,546.44
Totals:	4 transfer(s),	\$47,563.53					